

HOUSE BILL NO. 775

INTRODUCED BY D. HIMMELBERGER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A STATEWIDE, WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM; PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A WIRELESS ENHANCED 9-1-1 SURCHARGE; PROVIDING FOR DISTRIBUTION OF THE SURCHARGES COLLECTED; PROVIDING FOR THE ADMINISTRATION OF THE WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM; PROVIDING IMMUNITY FROM LIABILITY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-114, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Legislative findings -- purpose. (1) The legislature finds that:

(a) statewide enhanced 9-1-1 has proved to be a lifesaving service;

(b) routing a 9-1-1 call to the appropriate public safety answering point with a display of certain caller identification information and location information should be available for all users of telecommunications services, regardless of the technology used to make and transmit the 9-1-1 call; and

(c) it is in the best interest of the public to ensure that there is adequate funding to support the deployment and ongoing delivery of enhanced 9-1-1 service by wireless service providers, resellers, and public safety answering points and the public safety agencies that respond.

(2) The purpose of [sections 1 through 15] is to facilitate the development and implementation of a wireless enhanced 9-1-1 system in a timely, efficient, and effective manner.

NEW SECTION. Section 2. Wireless enhanced 9-1-1 surcharge. (1) (a) Except as provided in subsection (1)(b), there is imposed a surcharge of 50 cents a month on each commercial mobile radio service connection in the state for wireless enhanced 9-1-1 service.

(b) The surcharge may not be imposed on services that:

(i) the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana;

1 (ii) are purchased as prepaid connections; or

2 (iii) are provided by a service provider or reseller that has received from the federal communications
3 commission a waiver that allows the service provider or reseller to not provide wireless enhanced 9-1-1 services.

4 (c) The surcharge is imposed on the end-use customer who has a place of primary use in this state.

5 (2) (a) Each wireless provider and reseller shall bill to and collect the monthly surcharge from each
6 end-use customer for each connection purchased by the customer.

7 (b) The wireless provider or reseller shall list the surcharge as a separate line item on each bill.

8 (c) If a wireless provider or reseller receives a partial payment from an end-use customer for a monthly
9 bill, the wireless provider or reseller shall apply the payment against the amount the customer owes the wireless
10 provider or reseller before applying the partial payment against the surcharge imposed in this section.

11 (3) Each wireless provider or reseller shall retain 2% of the total amount of surcharges collected by the
12 wireless provider or reseller to offset administrative expenses associated with billing for and collecting the
13 surcharge.

14 (4) Each wireless provider or reseller shall, as provided in [section 10], remit to the department of
15 revenue the total amount of surcharges collected, less the amount retained pursuant to subsection (3).

16 (5) The surcharges collected by the wireless provider or reseller under this section:

17 (a) are not subject to any tax, fee, or assessment except as provided in 10-4-201 and this section; and

18 (b) are not considered revenue of the wireless provider or reseller.

19 (6) Each end-use customer that is subject to this section is liable for the surcharge until it has been paid
20 to the wireless provider or reseller.

21 (7) A wireless provider or reseller is not required to:

22 (a) remit surcharges that have not been paid by customers; or

23 (b) take any legal action to enforce the collection of the surcharge for which any customer is billed.

24 (8) The department of revenue may initiate a collection action. If the department of revenue prevails
25 in a collection action, reasonable attorney fees and costs must be awarded to the department of revenue.

26
27 **NEW SECTION. Section 3. Wireless enhanced 9-1-1 account -- appropriation.** (1) There is an
28 account within the state special revenue fund into which the department of revenue shall deposit the amounts
29 remitted under [section 2] for wireless enhanced 9-1-1 service. Money in the wireless enhanced 9-1-1 account
30 may be used only for the purposes of ensuring adequate cost recovery for the deployment and ongoing delivery

1 of wireless enhanced 9-1-1 service and for the expenses of administering [sections 1 through 15].

2 (2) For the purposes of this section, the cost of administering and accounting for the investment of
3 money in the wireless enhanced 9-1-1 account is, under 17-6-201(7), an expense of administering [sections 1
4 through 15].

5 (3) Unless expended pursuant to [sections 1 through 15], money in the wireless enhanced 9-1-1 account
6 remains in the wireless enhanced 9-1-1 account.

7 (4) Money in the wireless enhanced 9-1-1 account is statutorily appropriated, as provided in 17-7-502,
8 to the department for the purposes of [sections 1 through 15].

9
10 **NEW SECTION.** **Section 4. Distribution of wireless enhanced 9-1-1 account.** (1) (a) The
11 department shall pay from the wireless enhanced 9-1-1 account the costs of administering [sections 1 through
12 15].

13 (b) At the end of each calendar quarter, the department shall make quarterly allocations pursuant to
14 subsections (6) and (7) and shall make payments pursuant to subsections (8) and (9).

15 (2) (a) Each public safety answering point and, subject to subsection (2)(b), each wireless provider and
16 reseller is eligible to seek reimbursement from the wireless enhanced 9-1-1 account solely to pay for
17 reimbursable costs. For the purposes of this section, expenses, other than reimbursable costs, incurred to
18 operate a public safety answering point or to provide or resell wireless services, including but not limited to
19 expenses for overhead, staffing, and other operations, are not reimbursable.

20 (b) To be eligible for reimbursement under this section:

21 (i) a public safety answering point must have requested a wireless provider to provide phase I or phase
22 II wireless enhanced 9-1-1 service and must have applied for reimbursement from the wireless enhanced 9-1-1
23 account for reimbursable costs; and

24 (ii) a wireless provider or reseller that seeks reimbursement:

25 (A) must have collected and remitted the surcharge as required by [section 2]; and

26 (B) must have been requested by a public safety answering point to provide wireless enhanced 9-1-1
27 service in a municipality or county in this state.

28 (3) The department may make a payment under this section only after the department has received an
29 application for reimbursement for reimbursable costs from a public safety answering point, wireless provider,
30 or reseller.

(4) (a) The department shall review each application for reimbursement to determine the appropriateness of the reimbursable costs claimed by the public safety answering point, wireless provider, or reseller and whether or not the costs claimed are, in fact, reimbursable costs.

(b) If the department determines that some or all of the costs claimed are not reimbursable costs, the department shall adjust the claim to reflect costs that are appropriate and shall notify the public safety answering point, wireless provider, or reseller of the adjustment.

(c) If the public safety answering point, wireless provider, or reseller contests the adjustment, the department may not make payment to the public safety answering point, wireless provider, or reseller until the amount owed is made certain as provided for in [section 7].

(5) After paying the amount payable under subsection (1)(a), the department shall allocate the remainder of the money in the wireless enhanced 9-1-1 account as provided in subsections (6) and (7).

(6) (a) For each quarter of each fiscal year through the fiscal year ending June 30, 2010, the department shall allocate:

(i) one-half of the balance of the wireless enhanced 9-1-1 account to public safety answering points; and

(ii) the remaining one-half of the wireless enhanced 9-1-1 account to wireless providers and resellers.

(b) For each calendar quarter for fiscal years beginning after June 30, 2010, the department shall allocate:

(i) two-thirds of the balance of the wireless enhanced 9-1-1 account to public safety answering points; and

(ii) the remaining one-third of the wireless enhanced 9-1-1 account to wireless providers and resellers.

(7) Of the amount allocated under subsection (6)(a)(ii) or (6)(b)(ii):

(a) 84% is further allocated among all wireless providers and resellers in the proportion that the total amount of surcharges remitted under [section 2(4)] by each wireless provider or reseller for the calendar quarter bears to the total amount of surcharges remitted under [section 2(4)] by all wireless providers or resellers for the calendar quarter; and

(b) the remaining 16% is further allocated and payable in equal amounts among the wireless providers and resellers that have 10% or less each of the total number of wireless customers in this state.

(8) Subject to subsection (9), the department shall pay reimbursements applied for by:

(a) public safety answering points from the amount allocated under subsection (6)(a)(i) or (6)(b)(i); and

1 (b) wireless providers and resellers from the amounts allocated under subsections (7)(a) and (7)(b).

2 (9) (a) A public safety answering point, wireless provider, or reseller may not be reimbursed for costs
3 for which the public safety answering point, wireless provider, or reseller has previously received reimbursement
4 under this section.

5 (b) (i) If for any calendar quarter the amount of money allocated under subsection (6)(a)(i) or (6)(b)(i)
6 is insufficient to pay the total amount of reimbursements that have been applied for by public safety answering
7 points and that are determined by the department to be reimbursable costs, the department shall prorate the
8 reimbursements among all of the public safety answering points that submit applications for that quarter's
9 payment. Any amount not reimbursed under this subsection (9)(b)(i) must be paid as provided in subsection
10 (9)(b)(ii).

11 (ii) If the department is unable to fully reimburse a public safety answering point under subsection
12 (9)(b)(i) in any quarter, the department shall in the subsequent quarter, after making the allocations provided
13 for in subsection (6), pay from the allocation to public safety answering points any unpaid balances from the
14 previous quarter before paying any reimbursable costs specified in an application that was submitted after the
15 application for which reimbursable costs remain unpaid from the preceding quarter. If the amount available is
16 insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid
17 balances that are carried forward for as many quarters as necessary until all unpaid balances are fully paid, with
18 the oldest unpaid balance having the highest priority.

19 (c) (i) If for any calendar quarter the amount of money allocated under subsection (7)(a) is insufficient
20 to pay the total amount of reimbursements applied for by wireless providers and resellers, the department shall
21 prorate the reimbursements among all of the wireless providers and resellers that submit applications for that
22 quarter's payment and any amount not reimbursed under this subsection (9)(c)(i) must be paid as provided in
23 subsection (9)(c)(ii).

24 (ii) Subject to subsection (9)(d), if the department is unable to fully reimburse a wireless provider or
25 reseller under subsection (9)(c)(i) in any quarter, the department shall in the subsequent quarter pay from the
26 allocation under subsection (7)(a) to wireless providers and resellers any unpaid balances from the previous
27 quarter before paying any reimbursable costs specified in an application that was submitted after the application
28 for which reimbursable costs remain unpaid from the preceding quarter. If the amount available under subsection
29 (7)(a) is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying
30 unpaid balances that are carried forward for as many quarters as necessary until all unpaid balances are fully

1 paid, with the oldest unpaid balance having the highest priority.

2 (d) The allocations provided for in subsection (7)(b) are payable each quarter regardless of any unpaid
3 balance remaining under subsection (9)(c)(i) or (9)(c)(ii).

4
5 **NEW SECTION. Section 5. Reporting.** The department shall report to the appropriate interim
6 committee, pursuant to 5-5-215, as requested by the interim committee. The department shall submit a report
7 to each legislature, pursuant to 5-11-210, that must include, at a minimum:

8 (1) the total amount of surcharges remitted to the state in each calendar quarter of the last 2 fiscal
9 years;

10 (2) the amount disbursed from the enhanced 9-1-1 account in each calendar quarter of the last 2 fiscal
11 years;

12 (3) the amount of unpaid reimbursable costs, if any, in each calendar quarter of the last 2 fiscal years;

13 (4) the business name or, for a public safety answering point, a unique identifier of the recipient of each
14 disbursement and a general description of the reimbursable costs or project for which the money was disbursed;

15 (5) the conditions, if any, placed by the department on any disbursement from the enhanced 9-1-1
16 account;

17 (6) the planned expenditures from the enhanced 9-1-1 account in each calendar quarter of the next 2
18 fiscal years;

19 (7) the amount of unexpended funds, if any, carried forward in the wireless enhanced 9-1-1 account
20 in any fiscal year covered in the report;

21 (8) the findings, conclusions, and recommendations, if any, regarding the department's continuous
22 consideration of the costs of providing wireless enhanced 9-1-1 service. The purpose of the information is to
23 assist the legislature whenever it considers adjustments to the monthly surcharge or the wireless enhanced
24 9-1-1 account.

25 (9) a progress report of statewide, regional, and local readiness for wireless enhanced 9-1-1 services,
26 including the readiness of public safety answering points, wireless providers, resellers, and if relevant, wireline
27 providers of basic 9-1-1 or enhanced 9-1-1 services;

28 (10) the status of requirements outlined in the federal communications commission order and of the
29 requirements in any subsequent orders of the federal communications commission that relate to wireless
30 enhanced 9-1-1 services; and

(11) technological, economic, regulatory, or other developments that the department considers significant and that may affect or may be affected by wireless enhanced 9-1-1 services.

NEW SECTION. Section 6. Confidential information. (1) To effectively administer the provisions of [sections 1 through 15], the department may acquire or have access to certain proprietary information and other information that is not subject to public disclosure.

(2) Except as provided in this section, all proprietary information in the possession or custody of the department:

(a) is confidential and not subject to public disclosure; and

(b) may not be disclosed to any third party without the written consent of the wireless provider or reseller whose proprietary information may be disclosed or except as otherwise provided in this section.

(3) The department shall adopt reasonable procedures to prevent disclosing or providing access to proprietary information to the public or to wireless providers or resellers.

(4) (a) Except as provided in subsection (5) or this subsection (4), proprietary information submitted by a public safety answering point, wireless provider, or reseller pursuant to [sections 1 through 15] may be released only to the public safety answering point, wireless provider, or reseller that submitted the information or to the department, the department of revenue, the legislative audit division as provided in subsection (2)(b), or the legislative fiscal division as provided in subsection (2)(c) unless the public safety answering point, wireless provider, or reseller that submitted the information gives written permission to release the information.

(b) The legislative audit division has access to any information, including proprietary information, that the legislative audit division determines is necessary for the purposes of financial compliance audits, performance audits, information system audits, and other duties statutorily assigned to the division pursuant to Title 5, chapter 13, parts 3 and 4.

(c) The legislative fiscal division has access to any information, including proprietary information, that the legislative fiscal division determines is necessary for the purposes of budget analysis, revenue estimating, and other duties statutorily assigned to the division pursuant to Title 5, chapter 12, parts 2 through 4.

(5) If the department determines that, in order to administer the provisions of [sections 1 through 15], it is necessary to provide access to confidential information to any third party, including a public safety answering point, for any purpose, the department shall ensure that the confidentiality of the information is maintained.

(6) All information regarding the location of commercial mobile radio service obtained by any public

1 safety answering point, public safety agency, wireless provider, or reseller or by an employee or agent of a public
2 safety answering point, public safety agency, wireless provider, or reseller is not a public record open to public
3 disclosure.

4 (7) A person may not disclose or use, for any purpose other than the wireless enhanced 9-1-1 calling
5 system, information contained in any database of a public safety answering point or in any database of a
6 wireless provider's or reseller's network portion of the wireless enhanced 9-1-1 calling system without the prior
7 written consent of the public safety answering point, wireless provider, or reseller.

8 (8) General information collected by the department may be released or published only in a manner that
9 does not identify or allow identification of:

10 (a) the number of subscribers of any wireless provider or reseller; or

11 (b) the revenue attributable to any wireless provider or reseller.

12 (9) A state employee shall maintain confidentiality as required in 2-2-104 and is subject to the penalties
13 provided for in 2-2-136 if the confidentiality provisions of this section are violated by the employee.

14
15 **NEW SECTION. Section 7. Dispute resolution.** (1) A public safety answering point, wireless provider,
16 or reseller that is aggrieved by a decision of the department may petition the department for reconsideration of
17 the decision within 10 days after the decision is rendered. As part of its petition for reconsideration, the aggrieved
18 party may present any reasonable evidence or information to the department. The department shall render its
19 decision on the reconsideration petition as soon as reasonably possible, but no later than 30 days after the
20 reconsideration request is made.

21 (2) Following the completion of the reconsideration petition process, an aggrieved party, with agreement
22 of the other parties to the grievance, if any, may have the dispute resolved through final and binding arbitration
23 by a single arbitrator in accordance with the wireless industry arbitration rules of the American arbitration
24 association. The costs of the arbitration, including the fees and expenses of the arbitrator, must be paid by the
25 nonprevailing party of the arbitration proceeding. The arbitrator's decision is final and binding and may be
26 confirmed and enforced in any court of competent jurisdiction.

27 (3) This section does not preclude a public safety answering point, wireless provider, or reseller from
28 pursuing in a court of competent jurisdiction any right or remedy to which the public safety answering point,
29 wireless provider, or reseller is legally entitled.

1 **NEW SECTION. Section 8. Liability -- immunity -- exception.** (1) Except as provided in subsection

2 (2):

3 (a) a wireless provider or a reseller and the employees, directors, officers, assigns, affiliates, or agents
4 of a wireless provider or reseller are not liable for any civil damages or criminal liability from:

5 (i) death or injury to an individual or from damage to property incurred by any person in connection with
6 any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing,
7 maintaining, or providing access to wireless enhanced 9-1-1 services or any other wireless service intended to
8 help persons obtain emergency assistance; or

9 (ii) the release of customer information, including proprietary information, to any governmental entity,
10 including any public safety answering point, as required under [sections 1 through 15]; and

11 (b) a public safety answering point or the employees, assigns, or agents of a public safety answering
12 point or emergency response personnel are not liable for any civil damages or criminal liability from death or
13 injury to an individual or from damage to property incurred by any person in connection with any act or omission
14 in the development, installation, maintenance, operation, or provision of wireless enhanced 9-1-1 service.

15 (2) The immunity provided under subsection (1) does not apply if the death of or injury to an individual
16 or damage to property was caused by:

17 (a) a crime intentionally committed by a public safety answering point, wireless provider, or reseller or
18 the employees, directors, officers, assigns, affiliates, or agents of a wireless provider, reseller, or public safety
19 answering point; or

20 (b) action that constitutes willful misconduct or gross negligence by the public safety answering point,
21 wireless provider, or reseller or the employees, directors, officers, assigns, affiliates, or agents of a public safety
22 answering point, wireless provider, or reseller.

23
24 **NEW SECTION. Section 9. Record of collections.** Each wireless provider and reseller responsible
25 for the collection of the surcharge imposed by [section 2] shall keep records, render statements, make returns,
26 and comply with rules adopted by the department of revenue with respect to the surcharge. The department of
27 revenue may require the wireless provider or reseller to make returns, render statements, or keep records
28 sufficient to show whether there is liability for the surcharge.

29
30 **NEW SECTION. Section 10. Filing returns.** (1) The wireless provider or reseller that collects the

1 surcharge under [section 2] shall file a return with the department of revenue, on or before the last day of the
2 month following the end of each calendar quarter, reporting the amount of surcharge due during the quarter.
3 Returns are subject to the penalty for false swearing provided in 45-7-202.

4 (2) When a return of the surcharge is required, the wireless provider or reseller that is required to make
5 the return shall pay the surcharge due to the department of revenue at the time fixed for filing the return.

6 (3) The wireless provider or reseller shall pay the surcharge based on the net amount billed for the
7 surcharge during the quarter.

8 (4) As used in this section, the net amount billed for the surcharge equals the gross amount billed for
9 the surcharge, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate
10 adjustments.

11
12 **NEW SECTION. Section 11. Refund.** If the amount paid by a wireless provider or reseller to the
13 department of revenue exceeds the amount of surcharge owed, the department of revenue shall refund the
14 amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of
15 a month from the date of payment of the excess until the date of the refund. A refund may not be made to a
16 wireless provider or reseller that fails to claim the refund within 5 years after the due date for filing of the return
17 with respect to which the claim for refund relates.

18
19 **NEW SECTION. Section 12. Credit for overpayment -- interest.** (1) If the department of revenue
20 determines that the amount of surcharge, penalty, or interest paid for any year is more than the amount due, the
21 amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer
22 and the balance must be refunded to the taxpayer or the taxpayer's successor through reorganization, merger,
23 or consolidation or to the taxpayer's shareholders upon dissolution.

24 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is
25 charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever
26 date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

27 (3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is
28 delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the
29 department of revenue for the purpose of verifying the amount of the overpayment.

30 (b) Interest is not allowed:

1 (i) if the overpayment is refunded within 6 months from the date the return is due or from the date the
2 return is filed, whichever is later; or

3 (ii) if the amount of interest is less than \$1.

4 (c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one
5 reasonably assumed to be imposed by [sections 1 through 15] is considered an overpayment with respect to
6 which interest is allowable.

7
8 **NEW SECTION. Section 13. Statute of limitations.** (1) Except as provided in subsection (3), a
9 deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice
10 of the additional surcharge proposed to be assessed is mailed within 5 years from the date the return was filed.
11 For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the
12 last day. If the taxpayer, before the expiration of the period prescribed for assessment of the surcharge, consents
13 in writing to an assessment after that time, the surcharge may be assessed at any time prior to the expiration
14 of the period agreed upon.

15 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after
16 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,
17 whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the
18 department of revenue determines the existence of the overpayment and approves the refund or credit. If the
19 taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the
20 department of revenue may propose an additional assessment, the period within which a claim for refund or
21 credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

22 (3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or
23 an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files
24 a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud
25 by the department of revenue.

26
27 **NEW SECTION. Section 14. Surcharge held in trust.** (1) Each wireless provider and reseller that is
28 required to collect the surcharge imposed by [section 2] holds it in trust for the state of Montana and shall forward
29 the surcharges collected to the department of revenue in the manner and at the time provided by [section 2].

30 (2) (a) If a wireless provider or reseller that is required to collect the surcharge fails to remit any amount

1 held in trust for the state of Montana on or before the last day of the month following the end of each calendar
2 quarter, the department of revenue shall add to the amount of the delinquent surcharge, in addition to any other
3 penalty provided by law, a penalty equal to 10% of the delinquent surcharge plus interest at the rate of 1% a
4 month or fraction of a month computed on the amount of the delinquent surcharge plus any unpaid penalties
5 and interest. Interest is computed from the date the surcharge is due until the date of payment.

6 (b) The department of revenue may waive the penalty if the wireless provider or reseller establishes
7 that the failure to pay on time was due to reasonable cause and was not due to neglect.

8 (3) (a) When a deficiency is determined and the additional surcharge becomes final, the department
9 of revenue shall mail a notice and demand for payment to the wireless provider or reseller. The surcharge is due
10 and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency
11 assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original
12 due date of the return.

13 (b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10%
14 penalty must be added to the amount of the deficiency.

15 (4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if
16 the wireless provider or reseller establishes that the failure to pay the proper amount of surcharges was due to
17 reasonable cause and was not due to neglect.

18 (5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the
19 collection of the delinquent amount and all penalties, interest, and collection charges accrued. The warrant is
20 governed by the provisions of Title 15, chapter 1, part 7.

21
22 **NEW SECTION. Section 15. Wireless provider or reseller as taxpayer under provisions for**
23 **surcharge.** Unless the context requires otherwise, the provisions of Title 15 referring to the audit and
24 examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties,
25 interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the
26 state tax appeal board, and related procedures apply to [sections 1 through 15] as if the surcharge were a tax
27 imposed upon or measured by net income. The provisions apply to the end-use customer liable for the surcharge
28 and to the wireless provider or reseller required to collect the surcharge. Any amount collected and required to
29 be remitted to the department of revenue is considered a tax upon the wireless provider or reseller that is
30 required to collect it, and that wireless provider or reseller is considered a taxpayer.

1
2 **Section 16.** Section 10-4-101, MCA, is amended to read:

3 **"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following
4 definitions apply:

5 (1) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in
6 10-4-301(1)(a).

7 (2) "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that
8 automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

9 (3) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a
10 telephone central office, trunking facilities from the central office to a public safety answering point, and
11 equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is
12 capable of providing basic 9-1-1 service.

13 (4) "Commercial mobile radio service" has the meaning provided in 47 CFR 20.3, which states,
14 generally, that commercial mobile radio service is:

15 (a) a mobile service that is:

16 (i) provided for profit, at least with the intent of receiving compensation or monetary gain;

17 (ii) an interconnected service; and

18 (iii) available to the public or to classes of eligible users so as to be effectively available to a substantial
19 portion of the public; or

20 (b) the functional equivalent of a mobile service described in subsection (4)(a).

21 (5) "Connection" means each active wireless telephone number assigned to an end-use customer of
22 a commercial mobile radio service for which the place of primary use for the customer is within this state.

23 ~~(4)~~(6) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

24 ~~(5)~~(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt
25 of a telephone request for emergency services, provides for a decision as to the proper action to be taken and
26 for dispatch of appropriate emergency service units.

27 ~~(6)~~(8) "Emergency" means an event that requires dispatch of a public or private safety agency.

28 ~~(7)~~(9) "Emergency services" means services provided by a public or private safety agency, including
29 law enforcement, firefighting, ambulance or medical services, and civil defense services.

30 (10) "End-use customer" means a person that contracts with the wireless provider or reseller for

1 commercial mobile radio services.

2 ~~(8)(11)~~ "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established
3 in 10-4-301(1)(b).

4 ~~(9)(12)~~ "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1
5 service and that consists of selective routing with the capability of automatic number identification and automatic
6 location identification at a public safety answering point enabling users of the public telecommunications system
7 to request emergency services by dialing the digits 9-1-1.

8 ~~(10)(13)~~ "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the
9 operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic
10 location identification controllers and display units, printers, and software associated with call detail recording,
11 and that is capable of providing enhanced 9-1-1 service.

12 ~~(11)(14)~~ "Exchange access services" means:

13 (a) telephone exchange access lines or channels that provide local access from the premises of a
14 subscriber in this state to the local telecommunications network to effect the transfer of information; and

15 (b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or
16 service provided in connection with the services described in subsection ~~(11)(a)~~ (14)(a).

17 (15) "Federal communications commission order" means federal communications commission E9-1-1
18 first report and order docket no. 94-102.

19 ~~(12)(16)~~ A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or
20 are affected by one or more common central office boundaries and who have agreed in writing to jointly plan
21 a 9-1-1 emergency telephone system.

22 (17) "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number
23 information to the public safety answering point for wireless calls.

24 (18) "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number
25 information and location information to the public safety answering point for wireless calls.

26 (19) "Place of primary use" means the primary business or residential street address location at which
27 an end-use customer's use of the commercial mobile radio service primarily occurs.

28 (20) "Prepaid connection" means a connection for which the service has been paid in advance and is
29 not under contract.

30 ~~(13)(21)~~ "Private safety agency" means any entity, except a public safety agency, providing emergency

1 fire, ambulance, or medical services.

2 (22) "Proprietary information" means customer lists, including the number of end-use customers, and
3 other related information, technology descriptions, technical information, or trade secrets and the actual or
4 developmental costs of wireless enhanced 9-1-1 service that are developed, produced, or received internally
5 by a wireless provider or reseller or by the employees, directors, officers, assigns, affiliates, or agents of a
6 wireless provider or reseller.

7 (14)(23) "Provider" means a public utility, cooperative telephone company, or any other entity that
8 provides telephone exchange access services.

9 (15)(24) "Public safety agency" means the state and any city, county, city-county consolidated
10 government, municipal corporation, chartered organization, public district, or public authority located in whole
11 or in part within this state that provides or has authority to provide emergency services.

12 (16)(25) "Public safety answering point" means a communications facility operated on a 24-hour basis
13 that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch
14 public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

15 (26) "Reimbursable costs" means the actual costs to lease, purchase, install, or maintain all necessary
16 equipment, including computer hardware and software, and all databases necessary to provide technical
17 functionality for the wireless enhanced 9-1-1 service pursuant to the federal communications commission order.

18 (17)(27) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a
19 telephone request for emergency services, notes the pertinent information from the caller and relays the
20 information to the appropriate public safety agency, other agencies, or other providers of emergency services
21 for dispatch of an emergency unit.

22 (28) "Reseller" means a person, as defined in 35-1-113, that purchases commercial mobile radio service
23 from a wireless provider for the purpose of reselling commercial mobile radio service to end-use customers.

24 (18)(29) "Subscriber" means an end user who receives telephone exchange access services.

25 (19)(30) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a
26 telephone request for emergency services, directly transfers the request to an appropriate public safety
27 answering agency or other provider of emergency services.

28 (31) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless
29 enhanced 9-1-1.

30 (32) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in

1 [section 3].

2 (33) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal
3 communications commission to provide facilities-based commercial mobile radio service within this state."

4
5 **Section 17.** Section 10-4-102, MCA, is amended to read:

6 **"10-4-102. Department of administration duties and powers.** (1) The department shall assist in the
7 development of basic and enhanced 9-1-1 systems in the state. The department shall:

8 (a) establish procedures for determining and evaluating requests for variations from basic or enhanced
9 9-1-1 service;

10 (b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

11 (c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

12 (d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with
13 the plan and use of funding; and

14 (e) as it finds necessary, report to the legislature the progress made in implementing statewide basic
15 and enhanced 9-1-1 systems and in implementing wireless enhanced 9-1-1 services.

16 (2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to
17 participate in development and implementation of the 9-1-1 program in the state. The council must be
18 established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone
19 companies, the associated public safety communicators, the department of emergency services, police
20 departments, sheriff's departments, local citizens, organizations, and other public safety organizations may
21 submit recommendations for membership on the advisory council."

22
23 **Section 18.** Section 10-4-114, MCA, is amended to read:

24 **"10-4-114. Rulemaking authority.** The department may adopt rules to implement the provisions of this
25 chapter. The rules may include but are not limited to:

26 (1) establishing procedures to evaluate and make determinations on requests for a variation of the basic
27 or enhanced 9-1-1 service;

28 (2) establishing evaluation criteria for basic and enhanced 9-1-1 systems plans;

29 (3) establishing requirements for program participation by public and private safety agencies;

30 (4) establishing guidelines for the distribution of funds; ~~and~~

1 (5) establishing requirements regarding applications for reimbursement for reimbursable costs to public
2 safety answering points, wireless providers, and resellers for enabling wireless enhanced 9-1-1 services; and
3 (5)(6) specifying reporting requirements."
4

5 **Section 19.** Section 17-7-502, MCA, is amended to read:

6 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
7 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
8 the need for a biennial legislative appropriation or budget amendment.

9 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
10 of the following provisions:

11 (a) The law containing the statutory authority must be listed in subsection (3).

12 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
13 appropriation is made as provided in this section.

14 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;
15 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; [section 3]; 15-1-111; 15-1-113; 15-1-121;
16 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212;
17 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512;
18 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409;
19 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102;
20 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214;
21 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and
22 90-9-306.

23 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
24 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
25 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
26 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
27 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
28 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
29 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,
30 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's

1 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
2 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion
3 of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.
4 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003,
5 the inclusion of 2-15-151 terminates June 30, 2005.)"

6
7 **NEW SECTION. Section 20. Codification instruction.** [Sections 1 through 15] are intended to be
8 codified as an integral part of Title 10, chapter 4, and the provisions of Title 10, chapter 4, apply to [sections 1
9 through 15].

10
11 **NEW SECTION. Section 21. Two-thirds vote required.** Because [section 8] limits governmental
12 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each
13 house of the legislature for [section 8] to become effective. If [this act] is not approved by at least two-thirds of
14 the members of each house of the legislature, then [section 8] is void.

15
16 **NEW SECTION. Section 22. Saving clause.** [This act] does not affect rights and duties that matured,
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18
19 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
21 the part remains in effect in all valid applications that are severable from the invalid applications.

22
23 **NEW SECTION. Section 24. Effective date.** [This act] is effective July 1, 2005.

24 - END -